

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 31, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSIMAR ESPINOZA-BARAJAS (2),

Defendant.

No. 4:22-CR-06032-MKD-2

ORDER ACCEPTING GUILTY PLEA
AND SETTING SENTENCING
SCHEDULE

On August 30, 2023, Josimar Espinoza-Barajas appeared before the Court and entered a plea of guilty to Count 3 of the Indictment filed on July 6, 2022, charging him with distribution of 50 grams of actual (pure) Methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1),(b)(1)(A)(viii). Defendant was represented by Richard Smith. Assistant United States Attorney Stephanie Van Marter appeared on behalf of the United States.

The Court finds that Defendant is fully competent and capable of entering an informed plea, that Defendant is aware of the nature of the charges and consequences of the plea, and that the plea of guilty is knowing, voluntary, is not

ORDER ACCEPTING GUILTY PLEA AND SETTING SENTENCING
SCHEDULE - 1

1 induced by fear, coercion, or ignorance, and is supported by an independent basis
2 in fact establishing each of the essential elements of the crime. Therefore,
3 Defendant's plea of guilty is accepted.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. A sentencing hearing is set for **December 21, 2023, at 11:00 a.m.**, in
6 Richland Courtroom 189. Absent truly exigent circumstances, the Court will not
7 consider a request for a continuance of sentencing unless: (1) the request is made
8 by written motion, (2) in accordance with LCivR 7, and (3) the motion and
9 supporting declaration are filed at least seven (7) days before the scheduled
10 sentencing hearing.

11 2. Defendant shall remain released to pretrial supervision pursuant to the
12 conditions of release previously imposed in this matter. ECF Nos. 45, 47. **If a**
13 **sentence of incarceration is imposed, Defendant shall be taken into custody at**
14 **the time of sentencing.**

15 3. The United States Probation Office shall prepare a Presentence
16 Investigation Report (PSR) pursuant to Fed. R. Crim. P. 32(c).

17 4. Not later than **November 10, 2023**, the Probation Officer shall disclose
18 the PSR to Defendant, counsel for Defendant, and the United States. Disclosure of
19 the PSR shall be subject to the limitations imposed by Rule 32 of the Federal Rules
20 of Criminal Procedure.

ORDER ACCEPTING GUILTY PLEA AND SETTING SENTENCING
SCHEDULE - 2

1 5. Within 14 days of the disclosure of the PSR, counsel shall communicate
2 in writing to the Probation Office (and opposing counsel) any objections they may
3 have as to legal and factual errors or omissions; sentencing classifications;
4 sentencing guideline ranges; and policy statements contained in or omitted from
5 the report. Objections shall be numbered and identify the paragraph(s) to which
6 the objection applies. Objections shall address the PSR in sequential order,
7 beginning with the lowest numbered paragraph. If an objection is filed, the
8 Probation Officer shall conduct such additional investigation as is necessary to
9 assess the merits of the objection.

10 6. The Probation Officer shall submit the final PSR to the Court by
11 **December 11, 2023**. The PSR shall be accompanied by an addendum setting forth
12 any objections counsel may have made, including those that have not been
13 resolved, together with the officer's comments and recommendations thereon. The
14 Probation Officer shall certify that the contents of the report, other than the
15 sentencing recommendations, including any revisions or addenda, have been
16 disclosed to counsel for Defendant and the United States, and that the addendum
17 fairly states any remaining objections. Except with respect to any written objection
18 made as required above, the PSR and computations shall be accepted by the Court
19 as accurate. Upon a timely objection by Defendant, the United States bears the
20 burden of proof on any fact that is necessary to establish the base offense level.

ORDER ACCEPTING GUILTY PLEA AND SETTING SENTENCING
SCHEDULE - 3

1 The Court, however, for good cause shown, may allow that a new objection be
2 raised at any time before the imposition of sentence. In resolving any disputed
3 issues of fact, the Court may consider any reliable information presented by the
4 Probation Officer, Defendant, or the United States.

5 Nothing in this Order requires the disclosure of any portions of the PSR that
6 are not disclosable under Fed. R. Crim. P. 32. The PSR shall be deemed to have
7 been disclosed: (1) when a copy of the report is physically delivered; or (2) one
8 day after the report's availability for inspection is orally communicated; or (3)
9 three days after a copy of the report or notice of its availability is mailed to
10 counsel, whichever date is earlier.

11 7. Not later than **December 6, 2023**, counsel shall file and serve all
12 motions and memoranda pertaining to Defendant's sentence, including departures
13 and variances, and sentencing recommendations.

14 a. Counsel shall utilize the following format when preparing initial
15 sentencing memoranda which are limited to 20 pages (absent prior
16 Court permission to file an overlength brief): I. Offense Level &
17 Criminal History, II. Departures, III. 18 U.S.C. § 3553(a).

18 b. Under Section I. Offense Level & Criminal History, counsel shall
19 discuss whether the PSR's Total Offense Level calculations (not
20

1 including departures) and Criminal History calculation are correct or
2 incorrect, providing legal authority for the party's position.

3 c. Under Section II. Departures, counsel shall discuss whether a
4 downward and/or upward departure is warranted under the Guidelines
5 and provide legal authority for such position.

6 d. Under Section III. 18 U.S.C. § 3553(a), counsel shall discuss whether
7 the resulting guideline range provides a reasonable sentence
8 sufficient, but not greater than necessary to comply with the purposes
9 set forth in 18 U.S.C. § 3553(a)(2), considering the other factors listed
10 in § 3553(a).

11 e. **FAILURE TO FILE AND SERVE SENTENCING MATERIAL**
12 **BY THIS DATE, TO INCLUDE MOTIONS OR MEMORANDA**
13 **FOR UPWARD OR DOWNWARD DEPARTURE, WILL BE**
14 **DEEMED A WAIVER OF THE RIGHT TO DO SO.**

15 8. Not later than **December 14, 2023**, the opposing party shall file and serve
16 its response limited to no more than seven (7) pages.

17 9. If Defendant intends to qualify for the safety valve, the parties must
18 schedule a meeting to conduct a safety valve interview to determine if the
19 Defendant has met the requirements of U.S.S.G. § 5C1.2(a)(5) **no later than**
20 **November 30, 2023.**

1 10. If either party intends to call witnesses or proffer exhibits at sentencing,
2 witness and exhibit lists must be exchanged by the parties and provided to the
3 Court no later **December 14, 2023**.

4 11. Sentencings shall be scheduled for a total of 45 minutes. If it is believed
5 that the sentencing hearing will last longer than 45 minutes, counsel shall contact
6 Chambers no later than **December 14, 2023**.

7 12. All pending motions pertaining to Defendant are **DENIED as moot** and
8 all pending hearing and trial dates pertaining to Defendant are **STRICKEN** from
9 the Court's calendar.

10 13. By and through this Order, the District Court Executive is authorized to
11 accept Defendant's payment in the amount of \$100 toward Special Penalty
12 Assessments.

13 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
14 this Order and provide copies to counsel, the United States Probation Office, and
15 the United States Marshals Service.

16 DATED August 31, 2023.

17
18 s/Mary K. Dimke
19 MARY K. DIMKE
20 UNITED STATES DISTRICT JUDGE

ORDER ACCEPTING GUILTY PLEA AND SETTING SENTENCING
SCHEDULE - 6